

Community Preservation Advisory Committee

December 9, 2002

9:30 – 2:00, State House Room 437

Meeting Summary

Attending:

Rep. Peter Mills (Chair), Skowhegan, Cornville
Rep. Ted Koffman (Chair), Bar Harbor,
Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant
and former Realtor
Peter Judkins, Maine State Housing Authority
(Board) and Franklin Savings Administration
Jeff Sosnaud, Maine Audubon (Board) and
Maine Small Business Alliance
Jim Brown, Director of Economic and
Community Development, City of Presque Isle
David Holt, Town Manager, City of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation
Commission

Absent Committee Members:

Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Additional Attendees:

Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal
Analysis (committee staff)
Rep. Scott Cowger
Kathy Fuller, MDOT
Bruce Van Note, MDOT
Harvey Boatman, DoE
Peter Merrill, MSHA
Alan Brigham, DECD
Peggy Schaffer, DECD
Elaine Clark, BGS
Mary Ann Hayes, SPO
Chris Hall, Maine Chamber of Commerce
Kirsten Hebert, Maine Municipal Association
Ginger Davis, MEREDA
Linda Gifford, Maine Realtors
Jennifer Burns, Maine Audubon

Summary of Actions / Decisions

Bills to be Proposed by CPAC Legislative Members to the 121st Legislature

1. Submit resolve to amend Article IX, Section 19 of the Maine Constitution to permit funding transit from motor vehicle and motor vehicle fuel revenues.
2. Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)
3. Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.
4. Create a bill to authorize the use of a tax increment financing (TIF) or TIF-like tool to promote affordable housing. A CPAC subcommittee will be meeting to provide additional information (scope, applicability, administration) in the next few weeks by a subcommittee of CPAC members and other key interested parties.
5. Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.
6. Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-

administered economic development grants - e.g., MITF, preferences within slum and blight funding.

7. Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).
8. Submit original language of LD 796, "Limitation on Ordinance Power" to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

Non-Legislative Actions Recommended by the CPAC

1. Insert incentives / points for regional cooperation in Transit Bonus rules. MDOT is reviewing the rules, which have not been finalized, to see if modification is possible in the short term.
2. Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, or create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)
3. Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).
4. Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Administrative Update

The focus of this meeting is to finalize a list of any legislation the Committee wishes want to introduce in the 121st Legislature. The rules of the Legislature generally only permit submission of bills into the first session, so this may be the only opportunity for the next two years. Also, the Committee cannot introduce legislation as a Committee, so it is up to the six legislative members of the Committee to sponsor any legislation the Committee puts forward.

If the members concur, the Committee will have its next meeting in early January to review the list of bills submitted to the Revisor, continue the discussion and elaboration of details, and set the long-term agenda.

CPAC will be submitting a report to the Governor and Legislature in early January, which will include the legislation that the Committee supports, as well as recommendations for non-legislative action.

Transportation: The Transit Bonus Payment Program and Permitting Motor Vehicle And Motor Vehicle Fuel Revenues To Be Used To Fund Transit

Presenters: Kathy Fuller, MDOT; Bruce Van Note, MDOT

HANDOUT – Copy of passed LD for Transit Bonus Payment Program

The Chairs posed the question: "Are there legislative changes needed to use a portion of the gas tax (highway fund) to support transit?" The Transit Bonus Payment Program appears to do so. Article IX, Section 19 allows fuel tax revenues for highways, and past interpretations of the Court and past attorney generals are fairly strict on this. The short-answer to 'is there a way to leverage it to provide incentives' is Yes, and it has happened in the Transit Bonus Payment Program.

The Transit Bonus Payment Program builds on the URIP (Urban-Rural Initiative Program – the old Local Road Assistance Program) to provide additional funding to municipalities' annual disbursements. The program allows a bonus to that check – which must be used for highway purposes – if that municipality increases their transit spending on operational expenses and capital above a base year's amount (FY '00).

The PL that created the Transit Bonus Payment Program is significantly different than the original bill submitted by Rep. Boyd Marley. The original bill would have increased General Fund expenditures for transit. In the law that passed, if a municipality increases investments in transit, there will be a corresponding increase in their local assistance check. Again, and consistent with Section 19, that funding, including the increase, must be used for highways.

The last section of this law (Chapter 681; LD507) requires rules; those are in process right now. MDOT is planning on taking applications to this program next year (2003). There's an overall funding cap of 2.5% of the URIP program – approximately \$475,000 annually.

- *Question:* A community that had a program in existence prior to the base year might not have the same benefit as somebody that is making improvements?
 - That is correct. If a municipality was “doing it right,” and had already increased their levels of funding to transit, it would not get the same benefit as somebody that improves their service during the time of this program.
 - *Response:* Maybe this isn't the year to do it, but I would like to see a way to reward communities that undertake new transit programs and benefit communities that have already made the transit investment that is working well.
- *Question:* Is this going to be a yearly thing – with increasing applications, won't you have decreasing benefit to towns?
 - That's a possibility. There will be an opportunity in three years for the Legislature to reexamine the program and expand it if there is a lot of interest on the part of municipalities.
- *Question:* Are any of you aware of efforts to change the constitutional limits on this to permit the funding to be used beyond highways and bridges?
 - That is an ongoing issue. To date, the court has interpreted that section of the Constitution very closely. However, most of the opinions of the Justices are legislatively generated. In recent history, in the past 8 years, I'm not aware of an effort to amend the Constitution that got much support.
- *Question:* Have we been able to tap federal money for key transportation infrastructure?
 - Yes, there are federal highway funds, federal transit funds, federal airport funds – and each of those are very compartmentalized.
- *Question:* Has there been a state needs assessment, or anything like it, that might educate the Committee to the need or potential for transit, if the Legislature would only support it?
 - MDOT recently completed a new Needs Assessment, which highlights some high priority needs across the state. MDOT can provide highlights of the Assessment to the Committee on transit needs included; the transit needs outlined primarily focus on bus systems.
 - MMA put out a transportation funding issue this summer in The Townsman that was very good.
- *Question:* What was the rationale for the requirement that municipalities have operated a transit system for three years to be eligible for the Program?
 - We wanted to benefit towns that are really making a consistent effort to provide transit opportunities, towns that just needed a boost to get them to the next level.
 - The 47 communities that are eligible for the program have a fairly heavy maintenance load, so we wanted to offset their costs in transit so they could do more road maintenance. Those 47 communities (which seemed like a high number to the Committee) include senior bussing operations.

- *Question:* A lot of communities have had trouble converting residents from a car-oriented culture to a transit- or bus-oriented culture; what are the types of programs that will assist people in making that transition, rather than just adding a bus?
 - There are a number of education / promotion programs through the programs MDOT has today – kids in transit, rideshare, etc. The key is to make sure that the option is seen as an alternative to meet their convenience needs.
- *Comment:* I don't see anything in this program to encourage regionalization. For example, in the Portland area, South Portland has its own transit system; they pulled out of Metro. We should be demanding that towns in a region coordinate, connect to one another, and best serve the customer. I'm getting increasingly frustrated at the real lack of connection between land use and transportation. The only way we are going to have shared transportation is to increase residential and commercial (destination) density. Every community that we're trying to build a denser community gets blocked by the community because of traffic concerns. There ought to be a formula where communities are rewarded for increasing allowable density from MDOT. Need to get you some statutory authority to have that carrot – and stick.
- *Comment:* It's rare to see buses crossing the Casco Bay bridge more than one-third full – the south Portland to Portland commute would be the ideal one to use transit on. If that's the test case, what are the figures, is it working, is it not – and why not? There is definitely a car culture; what are the incentives to change that behavior?
- *Comment:* Communities across the country are investing in transit-oriented development; if we don't allow it, they're not going to come. The time is ripe for the Legislature to declare we value transit. It may be like the Municipal Investment Trust Fund, which wasn't funded for 10 years. I don't see why we shouldn't declare this as a value, change the constitution, and wait a few years until the revenue returns to put some money into it.
- *Question:* In terms of the rule-making for the Transit Bonus Payment Program, would it be possible to build in the preferences for density to create some incentives within the rules?
 - My concern would not be legal, it would be if we were going beyond the scope of what the Legislature originally intended. This bill was not seeking to address regionalism concerns; this was looking at a modest first step to reward those transit providers that want to take the next step.
- *Question:* You will probably have a greater demand for this Program than you have money, so if you are setting up a scoring / priority system, would there be a way to put some favor on those proposals that come forward that suggest regional integration, transit oriented development, greatest benefit to the greatest number of people (density), etc?
 - The rules are currently being written; MDOT will ascertain their status. They may be very close to being published.

Proposal: Submit resolve to amend Article IX, Section 19 of the Maine Constitution¹ to permit funding transit from motor vehicle and motor vehicle fuel revenues.

- If this section is opened up, many legislators and other interests may want to add a lot of other exemptions, e.g., reimbursement of utility relocations.
- Can MDOT present an alternative to a Constitutional Amendment to provide significant encouragement and funding for transit development / support? Other states are.
- The Legislature has had this debate repeatedly; the highway fund has been protected by the Legislature because their constituents want to get to work.

¹ **Section 19. Limitation on expenditure of motor vehicle and motor vehicle fuel revenues.** All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

- The only way that most Mainers can get to work now is by getting in their single-occupancy-vehicle because they don't have another choice.
- If we open up the highway fund, the Transit Bonus Payment Program will likely get caught up in it.

Proposal: Insert incentives / points for regional cooperation in Transit Bonus rules.

- MDOT will review the rules, which have not been finalized, to see if modification is possible in the short term.

Proposal: Create a bill to direct MDOT to incorporate regionalism in the Transit Bonus Payment Program rules, if they are unable to modify the rules before they are finalized. (NOTE: These are routine technical rules, so this may not require legislative action.)

Proposal: Recommend SPO and MDOT clarify and update Chapter 202, the Comprehensive Plan Review Criteria Rule, or create a new MDOT rule regarding adequate transportation infrastructure inventory, analysis, and policies in the review of local comprehensive plans. One goal of the rules would be to align the rules with the goals of the Sensible Transportation Act. (A MDOT rule would require legislative direction.)

Proposal: Create a bill to direct MDOT promulgate rules to give preference in funding programs to communities that allow increased density (transit sufficient density) in their growth areas.

- It would be very difficult for the Legislature and MDOT to change the main transportation funding formula.
- MDOT and SPO have talked about amending the Comprehensive Plan Review Criteria rules related to transportation and comprehensive planning, connecting transportation and land use. That might be an opportunity to help communities do the planning that we can later reward.
- Providing preference to communities allowing increased density would be a major policy shift for MDOT. It would almost certainly have to be directed by the Legislature.
- I'm not sure that communities always have the ability to control the way development happens. I wonder if communities know what the state goals are regarding transportation and development densities.
- The mechanics for tying planning to funding would be an LD that called for more detailed rules around transportation, either in the Growth Management Act or the Sensible Transportation Act, with the hook that MDOT then find a way to target funds to those areas that are implementing / meeting those goals.
- When a town does a comprehensive plan, there are certain areas required, transportation is not one of the required inventory areas – it should be.
- Transportation is generically included in the required Public Infrastructure section. When you go to the next step, there are criteria for review, putting something in statute to direct DOT and SPO to clarify those rules regarding transportation would help.
- MDOT's preference would be to amend existing administrative rules that we have, rather than to amend the Growth Management Act. MDOT and SPO could work together to develop some language for an LD to direct that effort.

Transportation: Using Public Transportation for School Transportation

Presenters: Harvey Boatman, Department of Education

The Chairs posed the question: Are there opportunities for increased efficiency using transit to transport older students to/from school?

The federal definition of a school bus is very specific; any unit transporting more than 10 children on school-related activities is a school bus; that vehicle must then meet Federal Motor Vehicle Safety Standards. There are circumstances, in some locales, where transit has been used for some parts of their transportation – most often used for activity that start at the school and go somewhere else.

- *Question:* So, in Boston, public school students are no longer issued T passes?

- They may be. I'm not aware. I do know that Boston has one of the largest fleets of school buses in the US.
- *Question:* Is there a differentiation in the law / rules between secondary and primary?
 - No.
- *Question:* Students that are 18 can't get on a municipal bus because it doesn't have flags and bars?
 - That's the regulation. There are exceptions, but they are fairly well defined. The school bus provides the safest form of transportation in the U.S. A child getting to and from school in any other means is eighty times more at risk. School bus drivers require a higher license endorsement (Y) than transit drivers (P). The Y endorsement requires fingerprinting, background checks, training for special needs children, annual physicals, etc. Another fundamental concern is that most municipal transit systems are not equipped to meet the needs of special needs children, which a school bus does. Also, many states have regulations that require exclusive use for school buses during school hours, to separate the general public from little kids.
 - *Response:* It sounds like there are a lot of impediments to this idea.
- *Question:* How is Maine's school bus fleet rated in terms of air quality?
 - On a national basis, Maine is rated a C – our school bus fleet averages about 8 years old; any bus over 10 years old is polluting 95% more than a 1 year-old bus. A 2004 bus will have significant new controls, meeting a new set of standards. Our emphasis is to improve turnover to move the older buses out.
- *Question:* What is our goal for the school bus "grade?"
 - We want to get to no bus more than 10 years old, which will get us to a B or an A. In addition, Maine DEP has been working with the Department of Education to test the buses.
- *Comment:* I see half-empty school buses following half-empty transit buses. I would like to think that a small, but dedicated working group could tease out Maine regulations to permit this. We also need to look at kids overall health – the risk on buses is not just accidents, but obesity, diabetes, etc. It is also worthwhile to encourage kids that riding a public bus is a good thing. A key consideration is the alternatives we can provide to make the alternatives to buses safer, such as bike paths, sidewalks, and crossing guards.
- *Comment:* I would suggest move this item to the mid-term agenda, include it in the CPAC annual report, and ask Harvey if he could work with MDOT and Motor Vehicle to move this further with some comparison of the different standards so we could examine that in relation to the fleets we have in Maine. If there are only 47 transit systems, the universe isn't too big.
 - *Response:* That would have to be done through the commissioner, because time in this Administration is short.
 - There was a bill last session to permit the use of school buses for other uses, which was defeated.

Affordable Housing: Using Tax Increment Financing for Affordable Housing

Presenters: Alan Bringham, DECD; Peter Merrill, MSHA

The Chairs posed the question: If we are in agreement that tax increment financing (TIFs) are an appropriate tool to encourage development of affordable housing in our communities, how can we proceed?

MSHA and DECD agree that it is a good tool, but differ in their opinion of how it should be administered. DECD suggested that the existing TIF statute is a good template for an affordable housing TIF, and that the program would best be administered by MSHA. MSHA suggested that the most viable projects mix uses (residential-rental, residential-ownership, and commercial), so it makes sense to have the existing TIF statute integrated as well. MSHA would assist DECD in its application by providing its assistance and expertise.

- *Question:* Why couldn't the TIF be extended to owner-occupied housing?

- a. Incorporating a mechanism for owner-occupied housing has been very difficult for MSHA (e.g., who receives the benefits; the developer or the buyer).
- b. *DECD Response:* That's further argument for stand-alone legislation for affordable housing that could address owner-occupied and rental housing. It is not a good fit with the commercial bill. I would propose a stand-alone statute would have its own funding cap, to get around the cap in the existing TIF authorization, so that using the TIF for housing does not limit the municipality in using it for commercial purposes.
- *Comment:* I don't see residential development and commercial development separately. They are absolutely connected.

Proposal: Submit a bill proposal that is fairly non-specific and assemble a CPAC subcommittee of interested members and other key parties (MSHA and DECD must be involved) to discuss and decide on the details of the bill, such as scope, applicability, administration.

- *Comment:* As a representative of a community that has done commercial TIFs, I have some hesitation. The impact of the sheltered taxes that has been passed on to other communities, while we are holding the TIF, is not insignificant. I am very worried about having a last resort financing tool for commercial purposes diminished by having that TIF capacity increase significantly. I need to be shown the need for affordable housing TIFs are complementary to commercial TIFs and necessary.
- *Comment:* It would be up to each community to use this tool or not.
- *Comment:* Has the Committee considered a regional TIF tool? The people living in that community are a plus for the whole region. Are there opportunities for regional agreements, similar to FirstPark?
- *Comment:* Should the Committee be focusing on using this tool in service center areas, which are facing the pressures?
- *Comment:* My city has a public housing authority that serves a number of families, and has taken advantage of several programs. I'm concerned about the diminishing of the commercial TIF tool; we continue to need jobs more than housing.
- *Comment:* There would be nothing to require towns to use this tool. If anything, it would be an enhancement of local flexibility.
- *Comment:* One option is to limit its applicability to the housing markets that are deemed unaffordable. Whether we did that or not, those are probably the only places that would adopt it.
- *Comment:* Those are often the areas that are most affected by the sprawl problem.
- *Comment:* I think this is a tool that communities such as mine could use; I would be reluctant to tie it to the existing TIF; it should be a stand-alone tool. If we mix affordable housing in the commercial TIF, we may never use it again. Sheltering the value of the new housing would be very useful.

Affordable Housing: Revisiting LD 2099, the Livable, Affordable Housing Bill

Presenter: Peter Merrill, MSHA

LD 2099 never came to a vote in the House. It probably could have passed in the Senate, but wasn't voted on. The bill received an "ought to pass" recommendation from the Natural Resources and Economic Development committees.

- *Comment:* LD 2099 may be a good place to start, but there may be things to make it more palatable, less of a threat. E.g., two issues came up from the last meeting that we may think about: authorize the density transfer concept / approach; and incentive rather than mandate affordable housing, making it a more palatable opportunity by sheltering value against the school aid / funding formulas.
- *Comment:* One of the missing links in LD 2099 is a road width and right-of-way requirement. The bill addressed minimum lot size and frontage, but not the importance of road width. SPO has been working on some model ordinances that cover those types of issues.
- *Question:* Does LD 2099 have any value to be salvaged?

- *Response:* It depends where it comes from. If there is a whisper of state mandate, a project invoking this bill will not be supported by our town council.
- *Comment:* The general rule of thumb for developers is you don't want to build projects that are 100% affordable. 30-40% of the units are about as high as most people feel you ought to go. One approach is to incorporating mixed use, to create walk-to-work opportunities. LD 2099 used the concept of a state board to ensure that all those come together.
- *Comment:* You could flip-flop it; not make it mandatory, but have some meaningful incentives (e.g., TIFs).
- *Comment:* In Massachusetts, the decision rests at the local level, but if the town turns down a project with a significant affordable housing component, it can be moved up to the next level (the 40-B program).

Proposal: Create a bill to address affordable housing. Start with a shell of LD 2099 (the applicability and definitions), and create opportunities for local incentives (TIF-like incentives, density transfer fees) for developing affordable housing. Retain Design Guidelines and the direction to create rules; incorporate road width flexibility in Design Guidelines.

- Use the CPAC subcommittee that is examining residential TIFs to clarify the bill.
- *Comment:* Municipalities, councils of government, and the MMA policy committee may have some interesting input into this conversation.
- *Comment:* There are thousands of Mainers living in shelters that cannot afford to rent or buy a place to live because municipalities acting out of rational self-interest put the costs off on the next town. That is the most rational thing to do.
- *Comment:* I'm sensitive to the fact that there was a certain momentum initiated last session. I'd hate not to have something go in this session and lose that momentum. Maybe the Committee can recommend a bifurcated approach, move forward legislatively, but also work on the outreach and communication front through some public forums and consciousness-raising.
- *Comment:* I have a pretty strong philosophical objection to legislation that would mandate affordable housing. We're making it work in our town, with local reviews and regulations. However, we're not getting the legal guidance that we need from the state. If we're developing regulations, state government should be helping us work on this. Right now, we're only getting the information from MMA.
- *Comment:* I share the wariness in undertaking a battle we are likely to lose, but everything we try to do to address the problem of sprawl is going to come back to local control. It's the thread through everything we do. If we cede the local control argument out of the gate, we have lost already.
- *Question:* Can the municipal sector articulate how the state can help municipalities meet these goals?
- *Question:* Would municipalities like to see some goals? A menu of options that towns could use for a local solution?
 - *Response:* The state goals and the criteria rules have been in place since 1989 and we haven't seen meaningful action from the municipalities in any way. I'm happy to come up with alternatives, but need some committed local interests involved – and willing to push those options locally. At the same time of moving down a legislative path, I would encourage a specific outreach effort, engaging partners, including MMA, DECD, MSHA, SPO to do some quick outreach to bring that input back in to modify this bill, if appropriate.
- *Comment:* We talked about MMA's opposition to this bill last session; it was significant. But there was a host of other organizations that supported it. There has been a lot of outreach done; we are not the first task force to address this. MMA staff have been involved along the way. This has not been done in a vacuum; municipal officials have been involved. This is the epitome of a regional issue, and we don't have a means to deal with regional issues in the state.

Proposal: Work on outreach and communication on affordable housing agenda (TIFs and incentivized "Livable, Affordable Housing" bill), especially in those Labor Market Areas with the greatest problem. Hold forums sponsored by MSHA, CPAC, SPO (and others).

- Jim Lyson from the City of Lewiston is planning a workshop on this topic in the spring.

Building and Rehab Codes

Presenter: Rep. Scott Cowger

Rep. Cowger will be introducing legislation regarding contractor licensing. This has always failed because it would require mandated building code put on municipalities. To address this, the proposal will create a licensing system, similar to electrical contractors, where contractors would be licensed according to a state licensing code. This would create some basic standards statewide and be enforceable by the state. However, the licensing code is for the licensees only; municipalities don't need to enforce it.

- *Question:* Under your scenario, if a municipality had its own code that was in conflict with state code, how would that work?
 - The state code would be a state minimum. Generally municipalities would have a higher level. If they are just conflicting – not better or higher – but different, we would have to figure out how to deal with that.
- *Comment:* Six states do not have a statewide building code to some degree; however, not all of those are mandatory or applicable to single-family residential construction.
- *Comment:* The legislation Rep. Cowger is proposing is strictly limited to 1-2 family homes; it does not apply to commercial building contractors.
- *Question:* Most towns are using the BOCA (international code), Chapter 24 addresses rehab. Does that cover what we need?
 - If you look at what towns are using, they are either using BOCA or the Life Safety / Fire Protection industry code. On top of that, there are variations depending on when the codes were adopted and if they have been updated. Both of the national associations have developed rehab codes to go with their base codes. If a community updates their codes, they will likely adopt rehab codes as well. However, if they adopted a building code in 1980 and haven't touched it since, they probably don't have a rehab code.

Proposal: Create a bill to offer incentives to communities for adopting both a building code and the rehab component of *either* type (BOCA or Health and Safety), for example preferences for DECD-administered economic development grants - e.g., MITF, preferences within slum and blight funding.

- *Comment:* The lack of a consistent building and rehab code is a significant factor to the cost of doing business in Maine; a tremendous amount of expense is related to figuring out what codes apply. Many of the local developers are small-business people that don't necessarily have the expertise. One incentive might be economic development funding – strip away barriers to development.
- *Comment:* Large commercial buildings are generally built to a national standard anyway. Developers generally don't look to local standards that probably won't be as high.
- *Comment:* We want to be able to allow developers to bring rehab projects up to code incrementally, otherwise there is an incentive to move to greenfields.
- *Comment:* I think one code, rather than each town just having a code may assist developers in determining what the cost of the project will be.

Clarifying Growth Caps

HANDOUT – the language provided to the task force (pre-LD2062)

The original language of LD 2062 recommended by a subcommittee to the last growth management task force outlined three types of caps, and put some guidance in place for each type. In the Growth Management Act a couple years ago, there was language added that a town cap would have to be consistent with the plan (and therefore consistent with the goals of the Growth Management Act). However, there is no guidance or rules for towns, and no direction to SPO to develop that guidance.

- *Comment:* I don't see why it doesn't make sense for towns to target their growth according to their plan. I don't have any issues with that.

- *Question:* Would you support limiting a perpetual cap to let your planning catch up?
 - Although permanent caps make perfect sense in a community sense, they encourage sprawl in a regional, statewide sort of way.
- *Comment:* Last year, MMA was fine with revisiting the cap and ensuring it's consistent every 2 years. We want to ensure that municipalities that have caps can get the guidance they need to ensure that they are consistent. Beth's idea to get some rules in place would be very useful.
- *Comment:* right now there is almost no guidance in state law
- *Comment:* I don't believe that Windham has an active growth cap, but last year, we had 160 housing starts. What happens if we get 360? The town needs that tool to give them a break, a chance to catch up.
- *Comment:* What this provision prevents is the communities that are really putting a cap on growth because they just don't want any additional growth.
- *Comment:* I feel this bill is absolutely essential from this community's perspective. Growth caps may be very sensible for a municipality, but they have dire regional impacts. Growth caps do not distinguish between the types of development; they in fact often encourage sprawling patterns rather than clustered, denser developments that need to have a certain number of permits per phase / year to be economically viable. I thought there was a circuit-breaker type clause in the legislation proposed last year; if an emergency situation, the town could implement a 6-month moratorium, and they could adopt a growth cap after that for up to 2 years (with opportunity for an exemption).
 - *Response:* That would have been in the rule-making.
- *Comment:* I think there needs to be something to address rate-of-growth; what happens when your build-out scenario is happening within 4 years instead of 20? That might happen under rule-making, but it needs to be addressed.

Proposal: Submit original language proposed to the 2001 Growth Management Task Force regarding local rate of growth ordinances (growth caps) (new Title 30-A, §4360).

Proposal: Recommend SPO update Chapter 202, the Comprehensive Plan Review Criteria Rule and create a new rule (Rate of Growth Ordinance Review Criteria Rule), to evaluate growth caps against comprehensive plans.

Citizen-Initiated Referenda Imposing Retroactive Moratoria

LD 796 was introduced last year to address issue in Portland (the Munjoy Hill development and the resulting citizen referendum) and the uncertainty for developers and planners created when a citizen-initiated referenda can reverse, retroactively, a city's or board's decision. During the session, LD 796 was associated with other citizen-based bills, which hurt its chances.

- *Comment:* Although this can be used for affordable housing, it can also be used to stop the Wal-Mart from moving in. One might ask, "how else do you stop Wal-Mart?"
- *Comment:* If it is this easy to do a retroactive moratorium and derail a project, why bother to put the effort into good community planning? How many projects that have the words "infill" and "affordable housing" in them face a lot of community bias? Citizen-initiated retroactive moratoria are the tools of choice.
- *Comment:* I believe MMA supported this last year
 - *Response:* Yes, but MMA would oppose it this year because we would have to support the rights for citizen referenda.
- *Comment:* In this case, you would have the unfairness retroactively imposed. This would apply equally to Wal-Mart and affordable housing permits.
- *Comment:* I could go along with something that allows referenda during the appeal period.
- *Comment:* The prohibition was on something that had already been approved. If the petition was filed before the approval, that was OK.

Proposal: Submit original language of LD 796, “Limitation on Ordinance Power” to address retroactive moratoria on building (and other reversed local decisions) that are a result of citizen-initiated referenda.

- The Committee would like a 1-page summary of the bill and what the issues were.

Tax Policies related to CPAC Issues

Some of the tax policies related to the mandate of the CPAC include tax incentives / support for working waterfronts, a version of Vermont’s bill to reduce liquidation forestry by imposing higher capital gains taxes, and aspects of various tax proposals currently being debated in the public.

The Vermont law imposes capital gains taxes on land sales that benefit from liquidation forestry if use changes after land cleared. According to documents, the Vermont forest products industry hasn’t seen a particular change in their actions, but the tax department has seen a change.

- *Comment:* This ties back to the growth cap bill. If we are actively pushing the development out into the white pine forests, I would be uncomfortable in supporting that type of bill. If we are making development easier where it should go, I think we can support that.
- This program has been in place in Vermont for about five years. It has not been a revenue gainer, but they have essentially stopped liquidation harvesting. VT passed two bills addressing liquidation harvesting.

The chairs have also considered a new idea for subsidies for dairy farmers, and other rural communities. A very small tax, in percentage terms (maybe 0.1% or 0.2%), on the gross receipts from big-box retail (stores of a certain size, or stores serviced by parking greater than a certain size) would generate maybe \$15 million annually for a Rural Communities Preservation Fund to:

- i. Generate price supports for milk;
- ii. Provide property tax relief for farms and working waterfronts (support current use valuations);
- iii. Set aside funding for Land for Maine’s Future without having to go through bonding;
- iv. Support downtown rehabilitation.

Big box retail produces all these intangible costs; why not tax it and support those forms of land use that our state policy encourages? This bill could get support from the NRCM, sportsmen, agriculture, waterfront users.

- *Question:* Does the state usual tax things in small increments; is that something that is easily done?
 - Yes, there is a whole menu of tiny little special purpose excise taxes on all kinds of things.
- *Question:* Will your bill include Hannaford, Shaws, and LLBean?
 - Yes, but I don’t know how else to do it.

Other active discussions are focused on the Circuit Breaker program; there will probably be activity this session. The Local Option Sales Tax and Chebeague Tax Proposal will also likely be discussed. The Chebeague proposal is being billed as the “Maine Personal Land Bank and Community Preservation Program.”

Proposal: The Committee will not endorse individual tax reform proposals.

Proposal: If the CPAC develops criteria for evaluating tax proposals in relation to the goals of the Committee, members will be able to speak at the appropriate time.

Next Steps

The Committee should have a conversation that isn’t focused around cloture, that addresses individual issues, goes into more depth; thinks more in long term.

In the Committee’s report, we will want to try and open the door to have the possibility to submit legislation next session.

Next Meeting: 1/14: 10:00 – 12:00, location TBA <NOTE: Since the meeting on 12/9, the Legislature announced it would be in session at 10:00 AM on 1/14. A new time will be announced soon.>

Affordable Housing subcommittee volunteers: SPO, Alan Brigham, Peter Merrill, Ed Suslovic, Ginger Davis, Kirsten Hebert, Ted Koffman and/or Peter Mills. DECD and MSHA will be the substantive leads on the TIF discussion.

At the end of the green handout there are several areas next session that are related to the CPAC goals: school construction rules; stormwater rules; contractor certification; (possibly) access management.